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Preparatory Commission for the International Criminal Court

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A guide to the report of the Preparatory Commission

Prepared by the Secretariat

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A. Introduction

1. The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, by resolution F of the Final Act of the Conference, established the Preparatory Commission for the International Criminal Court with the mandate to prepare proposals for practical arrangements for the establishment and coming into operation of the Court, including the draft texts of:

(a) Rules of Procedure and Evidence;

(b) Elements of Crimes;

(c) A relationship agreement between the Court and the United Nations;

(d) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;

(e) Financial regulations and rules;

(f) An agreement on the privileges and immunities of the Court;

(g) A budget for the first financial year;

(h) The rules of procedure of the Assembly of States Parties.

2. For the Rules of Procedure and Evidence and the Elements of Crimes, resolution F stipulated that the draft texts should be finalized before 30 June 2000.

3. In addition, the Preparatory Commission was entrusted with preparing proposals for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to that crime. The Commission was required to submit such proposals to the Assembly of States Parties at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in the Statute. The provisions relating to the crime of aggression shall enter into force for the States Parties in accordance with the relevant provisions of the Statute.

4. Resolution F stipulated that the Secretary-General of the United Nations should convene the Preparatory Commission as early as possible at a date to be decided by the General Assembly of the United Nations. Pursuant to General Assembly resolutions 53/105 of 8 December 1998, 54/105 of 9 December 1999, 55/155 of 12 December 2000 and 56/85 of 12 December 2001, the Commission, which was open to representatives of States which had signed the Final Act and other States which had been invited to participate in the Conference, held 10 sessions[1] at the Headquarters of the United Nations.

5. In addition, resolution F stipulated that the Preparatory Commission should prepare a report on all matters within its mandate and submit it to the first meeting of the Assembly of States Parties. During its tenth session, at the 42nd plenary meeting, on 12 July 2002, the Commission decided to transmit its report, as contained in documents PCNICC/2000/1 and Add.1 and 2, PCNICC/2001/1 and Add.1-4, PCNICC/2002/1 and Add.1 and 2 and PCNICC/2002/2 and Add.1-3 to the Assembly of States Parties.

6. The present document, together with the list of documents annexed hereto, has been prepared to assist delegations in the consideration of the report of the Preparatory Commission.

B. Preparation of draft texts pursuant to resolution F of the Final Act

1. Rules of Procedure and Evidence (PCNICC/2000/1/Add.1)

7. The draft text of the Rules of Procedure and Evidence was considered by the Preparatory Commission at its first to fifth sessions. At the 23rd plenary meeting, on 30 June 2000, the Commission, consistent with the deadline established by resolution F, adopted its report containing the finalized draft text of the Rules of Procedure and Evidence, as contained in document PCNICC/2000/1/Add.1.

8. The summary of statements made in plenary in connection with the report of the Working Group on Rules of Procedure and Evidence is contained in document PCNICC/2000/INF/4.

9. In paragraph 13 of the proceedings of the Commission at its fifth session (PCNICC/2000/L.3/Rev.1), the Preparatory Commission took note of the following with respect to the Working Group on the Rules of Procedure and Evidence:

> "It was generally understood that rule [195, sub-rule 2] should not be interpreted as requiring or in any way calling for the negotiation of provisions in any particular international agreement by the Court or by any other international organization or State."

2. Elements of Crimes (PCNICC/2000/1/Add.2)

10. The draft text of the Elements of Crimes was considered by the Preparatory Commission at its first to fifth sessions. At the 23rd plenary meeting, on 30 June 2000, the Commission, consistent with the deadline established by resolution F, adopted its report containing the finalized draft text of the Elements of Crimes, as contained in document PCNICC/2000/1/Add.2.

11. The summary of statements made in plenary in connection with the report of the Working Group on Elements of Crimes is contained in document PCNICC/2000/INF/4.

3. A relationship agreement between the Court and the United Nations (PCNICC/2001/1/Add.1)

12. The draft Relationship Agreement between the Court and the United Nations was considered by the Preparatory Commission at its sixth to eighth sessions. At the 33rd plenary meeting, on 5 October 2001, the Commission adopted its report containing the text of the draft Relationship Agreement between the Court and the United Nations, as contained in document PCNICC/2001/1/Add.1.

13. Paragraph 7 of the report of the Preparatory Commission (PCNICC/2001/1) includes the following:

> "In the context of the discussions in the Working Group [on a Relationship Agreement between the United Nations and the International Criminal Court], the question was raised of how to deal with the dispute settlement provision of

article 119, paragraph 2, of the Statute, and in this context, the question of the advisory opinions of the International Court of Justice was also raised. Delegations expressed the view that the Assembly of States Parties may consider this question."

4. Basic principles governing a headquarters agreement to be negotiated between the Court and the host country (PCNICC/2002/1/Add.1)

14. The draft basic principles governing a headquarters agreement to be negotiated between the Court and the host country was considered by the Preparatory Commission at its eighth and ninth sessions. At the 37th plenary meeting, on 19 April 2002, the Commission adopted its report containing the draft text of basic principles governing a headquarters agreement to be negotiated between the Court and the host country, as contained in document PCNICC/2002/1/Add.1.

15. Paragraph 9 of the report of the Preparatory Commission (PCNICC/2002/1) includes the following:

"In connection with the discussions on the basic principles governing a headquarters agreement to be negotiated between the Court and the host country, a question was raised concerning the relevant principles to be applied to the Assembly of States Parties. However, the Working Group did not have sufficient time to consider the issue in all its aspects. The attention of the Assembly is therefore drawn to this important issue with a recommendation that the Assembly examine it."

5. Financial regulations and rules (PCNICC/2001/1/Add.2 and Corr.1 and PCNICC/2002/1/Add.2)

16. The draft Financial Regulations were considered by the Preparatory Commission at its sixth to eighth sessions. At the 33rd plenary meeting, on 5 October 2001, the Commission adopted its report containing the draft Financial Regulations, as contained in document PCNICC/2001/1/Add.2 and Corr.1.

17. The draft Financial Rules were considered by the Preparatory Commission at its ninth session. At the 37th plenary meeting, on 19 April 2002, the Commission adopted its report containing the draft Financial Rules, as contained in document PCNICC/2002/1/Add.2.

18. As noted in paragraph 15 of the proceedings of the Commission at its fifth session (PCNICC/2001/L.3/Rev.1), the Preparatory Commission took note, with respect to the Working Group on Financial Regulations and Rules of the Court, that the question of a contingency mechanism to meet extraordinary expenses had been extensively discussed and the Working Group was of the view that the matter required further reflection and discussion in future.

6. An agreement on the privileges and immunities of the Court (PCNICC/2001/1/Add.3)

19. The draft Agreement on the Privileges and Immunities of the Court was considered by the Preparatory Commission at its sixth to eighth sessions. At the 33rd plenary meeting, on 5 October 2001, the Commission adopted its report containing the draft Agreement on the Privileges and Immunities of the Court, as contained in document PCNICC/2001/1/Add.3.

20. Paragraph 8 of the report of the Preparatory Commission (PCNICC/2001/1) includes the following:

> "For registration of frequencies with the International Telecommunication Union (ITU), intergovernmental organizations require a special dispensation from ITU. The United Nations has been granted this dispensation. The activities of the Court will be hampered if it cannot operate radio and telecommunications equipment on its own frequencies. In order to overcome this major limiting factor for the Court, the attention of the Assembly of States Parties is drawn to this issue with a recommendation that the Assembly authorize the Court to seek a special dispensation with ITU so that the Court may be allocated its own frequencies. Alternatively, the Assembly of States Parties may consider including a provision in the Relationship Agreement with the United Nations which would allow the Court to operate its radio and telecommunications equipment on frequencies registered with the United Nations."
>
> "The issue was raised of the limitations to privileges and immunities granted to nationals and permanent residents in the territory of a State Party of their nationality or permanent residence. However, the Working Group did not have sufficient time to consider it. The attention of the Assembly of States Parties is therefore drawn to this important issue with a recommendation that the Assembly examine it when considering the draft Agreement on the Privileges and Immunities of the International Criminal Court."

21. During the tenth session, at its 42nd plenary meeting, on 12 July 2002, the Preparatory Commission agreed to the following technical revision of article 33, paragraph 1, and article 35, paragraphs 1, 2 and 4, of the Draft Agreement on the Privileges and Immunities of the Court:

> "**Article 33**
> "**Signature, ratification, acceptance, approval or accession**
>
> "1. The present Agreement shall be open for signature by all States, from ... September 2002 until 30 June 2004 at United Nations Headquarters in New York."
>
> "**Article 35**
> "**Amendments**
>
> "1. Any State Party may, by written communication addressed to the Secretariat of the Assembly, propose amendments to the present Agreement. The Secretariat shall circulate such communication to all States Parties and the Bureau of the Assembly with a request that States Parties notify the Secretariat whether they favour a Review Conference of States Parties to discuss the proposal.
>
> "2. If, within three months from the date of circulation by the Secretariat of the Assembly, a majority of States Parties notify the Secretariat that they favour a Review Conference, the Secretariat shall inform the Bureau of the Assembly with a view to convening such a Conference in connection with the next regular or special session of the Assembly.
>
> "...

"4. The Bureau of the Assembly shall immediately notify the Secretary-General of any amendment that has been adopted by the States Parties at a Review Conference. The Secretary-General shall circulate to all States Parties and signatory States any amendment adopted at a Review Conference."

22. At the same meeting, the Preparatory Commission noted that the Secretariat would be making every effort to have the Agreement on the Privileges and Immunities of the Court that the Assembly would adopt ready for signature on Tuesday, 10 September 2002, at United Nations Headquarters.

7. A budget for the first financial year (PCNICC/2002/2/Add.1)

23. The draft budget for the first financial period of the Court was considered by the Preparatory Commission at its eighth to tenth sessions. Pursuant to regulation 2 of the draft Financial Regulations, the first financial period extends from the first meeting of the Assembly of States Parties through December 2003. At its 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft budget for the first financial period, as contained in document PCNICC/2002/2/Add.1.

8. The rules of procedure of the Assembly of States Parties (PCNICC/2001/1/Add.4)

24. The draft Rules of Procedure of the Assembly of States Parties were considered by the Preparatory Commission at its seventh and eighth sessions. At the 33rd plenary meeting, on 5 October 2001, the Commission adopted its report containing the draft Rules of Procedure of the Assembly of States Parties, as contained in document PCNICC/2001/1/Add.4.

C. Proposals pursuant to resolution F of the Final Act for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime (PCNICC/2002/2/Add.2)

25. As noted in paragraph 9 of its report (PCNICC/2002/2), the Preparatory Commission agreed to include in its report and to transmit to the Assembly of States Parties the discussion paper on the definition and elements of the crime of aggression, as contained in PCNICC/2002/WGCA/RT.1/Rev.2, prepared by the Coordinator of the Working Group on the Crime of Aggression at the tenth session of the Commission, together with a list of all proposals and related documents on the crime of aggression issued by the Preparatory Commission as well as the historical review of developments relating to the crime of aggression prepared by the Secretariat (PCNICC/2002/WGCA/L.1 and Add.1). Proposals for a provision of the crime of aggression were considered by the Preparatory Commission at its second to tenth sessions.

26. At its 42nd plenary meeting, on 12 July 2002, the Preparatory Commission adopted its report containing the text of a draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression (see PCNICC/2002/2/Add.2).

D. Preparation of other proposals for practical arrangements for the establishment and coming into operation of the Court

1. Issues relating to the meeting of the Assembly of States Parties

(a) Draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties (PCNICC/2002/2, annex II)

27. The draft recommendation was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties, as contained in document PCNICC/2002/2, annex II.

(b) Provisional agenda for the first meeting of the Assembly of States Parties, to be held at United Nations Headquarters from 3 to 10 September 2002 (PCNICC/2002/2/Add.3)

28. The provisional agenda was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the provisional agenda for the first meeting of the Assembly of States Parties, to be held at United Nations Headquarters from 3 to 10 September 2002, as contained in document PCNICC/2002/2/Add.3.

(c) Composition of the Bureau at the first meeting of the Assembly of States Parties (PCNICC/2002/2, para. 11)

29. The question concerning the composition of the Bureau at the first meeting of the Assembly of States Parties was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission took note of the following understanding concerning the Bureau for the first meeting of the Assembly of States Parties:

- That the initial composition of the Bureau would be as follows:
  - African Group, five seats
  - Asian Group, three seats
  - Eastern European Group, three seats
  - Group of Latin American and Caribbean States, four seats
  - Western European and Other States Group, six seats
- That broad support existed for a suggestion that the Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, be elected President of the Assembly;
- That agreement on the distribution of the "core functions" within the Bureau would be based on the idea of bringing the number of core functions within the Bureau into line with the number of regional groups. As such, as a first step, the core functions within the Bureau, other than the President, would comprise the two Vice-Presidents explicitly provided for in the Statute, and a Bureau member performing the functions of Rapporteur which is not mentioned in the Statute, but which would be generally welcome. In the Bureau's initial

composition, these three core functions would be assigned to the Western European and Other States Group, the African Group and the Group of Latin American and Caribbean States. The attribution of any of these core functions to any of the regional groups still needs to be determined;

- In addition, it was suggested that the Chairman of the Credentials Committee, who will be appointed by the Assembly on the proposal of the President, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, should also be considered a core function. As such, it was suggested that that post would be held by a member from the regional group that has not yet been attributed a core function. Such a proposal would grant all regional groups access to the core functions of the Assembly, which would be in the interests of fairness and of good communication between the Bureau and the regional groups;

- Finally, the Group took note of the fact that there existed a widely held expectation that the principle of fair rotation of core Bureau functions between regional groups should be respected in the future.

(d) Draft resolution of the Assembly of States Parties concerning the provisional arrangements for the Secretariat of the Assembly of States Parties (PCNICC/2002/1, annex II)

30. The draft resolution was considered by the Preparatory Commission at its ninth session. At the 37th plenary meeting, on 19 April 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties concerning the provisional arrangements for the Secretariat of the Assembly of States Parties, as contained in document PCNICC/2002/1, annex II.

(e) Draft resolution of the Assembly of States Parties relating to the permanent secretariat of the Assembly of States Parties (PCNICC/2002/2, annex X)

31. The draft resolution was considered by the Preparatory Commission at its ninth and tenth sessions. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to the permanent secretariat of the Assembly of States Parties, as contained in document PCNICC/2002/1, annex X.

2. Establishment of subsidiary bodies

(a) Draft resolution of the Assembly of States Parties on the establishment of the Committee on Budget and Finance (PCNICC/2001/1, annex I)

32. At its 26th plenary meeting, on 8 December 2000, the Preparatory Commission assigned to the Working Group on Financial Regulations and Rules the responsibility to consider the composition, tasks and format of the committee on budget and finance of the Assembly of States Parties (PCNICC/2000/L.4/Rev.1, para. 13). The draft resolution was considered by the Preparatory Commission at its seventh and eighth sessions. At the 33rd plenary meeting, on 5 October 2001, the Commission adopted its report containing the draft resolution of the Assembly of States Parties on the establishment of the Committee on Budget and Finance, as contained in document PCNICC/2001/1, annex I.

(b) Draft resolution of the Assembly of States Parties relating to the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims (PCNICC/2002/2, annex XIII)

33. At its 26th plenary meeting, on 8 December 2000, the Preparatory Commission assigned to the Working Group on Financial Regulations and Rules the question of the establishment of trust funds and other funds as provided, for example, in article 79 of the Statute (PCNICC/2000/L.4/Rev.1, para. 13). At its 34th plenary meeting, on 8 April 2002, the Commission assigned the matter to the Working Group on Financial Issues-Victims Trust Fund. Thus, the matter was considered by the Preparatory Commission at its seventh to tenth sessions. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, as contained in document PCNICC/2002/2, annex XIII.

3. Procedures for nomination and for conduct of elections

(a) Draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of members of the Committee on Budget and Finance (PCNICC/2002/2, annex XI)

34. The procedure for the nomination and election of members of the Committee on Budget and Finance was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of members of the Committee on Budget and Finance, as contained in document PCNICC/2002/2, annex XI.

(b) Draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims (PCNICC/2002/2, annex XIV)

35. The procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims, as contained in document PCNICC/2002/2, annex XIV.

(c) Draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court (PCNICC/2002/2, annex XII)

36. The procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court was considered by the Preparatory Commission at its ninth and tenth sessions. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court, as contained in document PCNICC/2002/2, annex XII.

37. The procedure for election of judges, including for the first election, is still pending.

4. Issues relating to financing for the Court and the budget for the first financial period

(a) Draft resolution of the Assembly of States Parties relating to budget appropriations for the first financial period and financing of appropriations for the first financial period (PCNICC/2002/2, annex III)

38. The draft resolution was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to budget appropriations for the first financial period and financing of appropriations for the first financial period, as contained in document PCNICC/2002/2, annex III.

(b) Draft resolution of the Assembly of States Parties relating to the Working Capital Fund for the first financial period (PCNICC/2002/2, annex IV)

39. The draft resolution was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to the Working Capital Fund for the first financial period, as contained in document PCNICC/2002/2, annex IV.

(c) Draft resolution of the Assembly of States Parties relating to scales of assessments for the apportionment of the expenses of the International Criminal Court (PCNICC/2002/2, annex V)

40. The draft resolution was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to scales of assessments for the apportionment of the expenses of the International Criminal Court, as contained in document PCNICC/2002/2, annex V.

(d) Draft resolution of the Assembly of States Parties on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court (PCNICC/2002/1, annex II)

41. The draft resolution was considered by the Preparatory Commission at its ninth session. At the 37th plenary meeting, on 19 April 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court, as contained in document PCNICC/2002/1, annex II.

(e) Draft decision of the Assembly of States Parties relating to the provision of funds for the Court (PCNICC/2002/2, annex VI)

42. The draft decision was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft decision of the Assembly of States Parties relating to the provision of funds for the Court, as contained in document PCNICC/2002/2, annex VI.

(f) Draft resolution of the Assembly of States Parties on relevant criteria for voluntary contributions to the International Criminal Court (PCNICC/2001/1, annex II)

43. At its 26th plenary meeting, on 8 December 2000, the Preparatory Commission assigned to the Working Group on Financial Regulations and Rules the task of elaborating criteria for receiving and utilizing voluntary contributions in accordance with article 116 of the Rome Statute (PCNICC/2000/L.4/Rev.1, para. 13). The matter was considered by the Preparatory Commission at its seventh and eighth sessions. At the 33rd plenary meeting, on 5 October 2001, the Commission adopted its report containing the draft resolution of the Assembly of States Parties on relevant criteria for voluntary contributions to the International Criminal Court, as contained in document PCNICC/2001/1, annex II.

(g) Draft decision of the Assembly of States Parties relating to interim arrangements for the exercise of authority pending the assumption of office by the Registrar (PCNICC/2002/2, annex VII)

44. The draft resolution was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft decision of the Assembly of States Parties relating to interim arrangements for the exercise of authority pending the assumption of office by the Registrar, as contained in document PCNICC/2002/2, annex VII.

5. Issues relating to officials and staff as well as to the establishment of the International Criminal Court

(a) Conditions of service and compensation of judges of the International Criminal Court (PCNICC/2002/2/Add.1, annex VI)

45. At its 34th plenary meeting, on 8 April 2002, the Preparatory Commission assigned the question of the conditions of service and compensation of judges, the Prosecutor and the Registrar to the Working Group on Financial Issues — Remuneration of Judges, the Prosecutor and the Registrar, which considered the matter at the ninth and tenth sessions of the Commission. At its 42nd plenary meeting, on 12 July 2002, the Commission took note that the conditions of service and compensation of judges of the International Criminal Court, as adopted by the Working Group on Financial Issues — Remuneration of Judges, the Prosecutor and the Registrar, were annexed to the draft budget for the first financial period (PCNICC/2002/2/Add.1, annex VI).

(b) Draft decision of the Assembly of States Parties relating to the participation of the International Criminal Court in the United Nations Joint Staff Pension Fund (PCNICC/2002/2, annex VIII)

46. The question was considered at the intersessional meeting of experts held at The Hague from 11 to 15 March 2002 (PCNICC/2002/INF/2) as well as the ninth and tenth sessions of the Preparatory Commission. At its 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft decision of the Assembly of States Parties relating to the participation of the International Criminal Court in the United Nations Joint Staff Pension Fund, as contained in document PCNICC/2002/2, annex VIII.

(c) Draft resolution of the Assembly of States Parties relating to selection of the staff of the International Criminal Court (PCNICC/2002/2, annex IX)

47. The draft resolution was considered by the Preparatory Commission at its tenth session. At the 42nd plenary meeting, on 12 July 2002, the Commission adopted its report containing the draft resolution of the Assembly of States Parties relating to selection of the staff of the International Criminal Court, as contained in document PCNICC/2002/2, annex IX.

(d) Report of the intersessional meeting of experts held at The Hague from 11 to 15 March 2002 (PCNICC/2002/INF/2)

48. At its 36th plenary meeting, on 15 April 2002, the Preparatory Commission took note of the proceedings of an intersessional meeting of experts held at The Hague from 11 to 15 March 2002, which focused on provisional internal rules and regulations of the International Criminal Court, and recommended that the report of the meeting be transmitted to the Assembly of States Parties for onward transmission to the International Criminal Court (PCNICC/2002/1, para.10). At its tenth session, at the 42nd meeting, on 12 July 2002, the Preparatory Commission recalled the above recommendation and decided to annex the report of the meeting to its report (PCNICC/2002/2, appendix).

(e) Activities of the Bureau subcommittee acting as an interlocutory with the host country (PCNICC/2002/L.1/Rev.1, paras. 11-13; PCNICC/2002/L.4/Rev.1, para. 11; and PCNICC/2002/2 paras. 12 and 13)

49. At the 33rd plenary meeting, on 5 October 2001, the Chairman of the Preparatory Commission, following consultations with the Bureau, established a subcommittee of the Bureau to act as an interlocutory between the Preparatory Commission and the host Government to deal with the management of practical issues relating to the establishment of the International Criminal Court (PCNICC/2001/L.3/Rev.1, para. 19). At its ninth and tenth sessions, the Preparatory Commission received reports on the activities of the Bureau subcommittee acting as an interlocutory with the host country, as contained in documents PCNICC/2002/L.1/Rev.1, paragraphs 11 to 13, PCNICC/2002/L.4/Rev.1, paragraph 11, and PCNICC/2002/2, paragraphs 12 and 13:

> At its 36th meeting, on 15 April 2002, the Preparatory Commission took note of the oral report of the Chairperson of the subcommittee, on the functions that the subcommittee and the host country had identified as being necessary to take as soon as possible in order to ensure the expeditious establishment of the Court. Those functions included the setting up of provisional systems to provide the basic elements necessary to ensure that the infrastructure was in place to welcome the first officials of the Court. The systems, to be devised by an advance team of experts, would also ensure custody of information received after the entry into force of the Rome Statute and would allow for the Court to rapidly recruit personnel and procure the goods and services necessary for its effective functioning. To that end, the aim was that the experts would assist with the setting up of systems for human resources, a computerized financial system that would take into account the special requirements of a judicial institution, a computerized data and case management system, a security system, as well as systems on legal issues, public information, and the

administration and management of the building. More specifically, the setting up of those systems would entail the following tasks:

- In the area of human resources: drafting model personnel contracts; beginning the preparation of job descriptions and a job classification system; recommending a commercial health insurance plan; recommending rules and regulations for service-incurred accidents; and establishing, with the assistance of financial experts, a payroll system;

- In the area of finance: preparing for the setting up of bank accounts, a budget system and a payment/accounting system with all relevant checks and controls;

- In the area of information technology: in consultation with the host country, beginning the basic work and preparing a full outline of the options available for a computerized data and case management system; providing the necessary support to help set up the human resources and finance systems; assisting on aspects of information security; and preparing a web site allowing for Internet access;

- In the area of security: establishing a mechanism to ensure information security; preparing staff policies on security aspects; and establishing connections with security systems of other relevant organizations;

- On legal issues: assisting in the legal aspects of the human resources, finance and procurement systems which are being set up; dealing with host country privileges and immunities issues; performing a "custodial function", i.e., acknowledging receipt of communications to the Court prior to the election of the high officials; and taking custody of documents that could constitute potential evidence in future proceedings before the Court;

- On public information: dealing, inter alia, with routine information matters; producing information materials; and updating the web site,

- On buildings and facilities management: liaising with the host country on the preparation of the temporary building, the building of a courtroom space and the appropriate allocation of furnishings;

- On procurement: recommending and preparing model procurement contracts and liaising with the host country on the provision of movable infrastructure.

It was also noted that there would be a need for an expert to coordinate the performance of the above-mentioned tasks, and it was stressed that the experts would not be drafting the actual job descriptions and other human resources matters, nor would they be doing any actual procurement. Such matters would ultimately be left for the officers of the Court. The role of the advance team, which would comprise seven or eight independent, mid-level experts, would be to provide guidance and assistance to the Court during its initial stages. The experts would establish the systems and undertake functions until the first meeting of the Assembly of States Parties. It was further explained that discussions were under way with the International Tribunals for the Former Yugoslavia and for Rwanda and the Department of Peacekeeping Operations of the United Nations Secretariat to identify experts with proven experience in the handling of systems similar to those required by the Court. As regards the financing of the team of experts, mention was made of contributions from the

European Union and the MacArthur Foundation, a private independent charitable foundation (PCNICC/2002/L.1/Rev.1, paras. 11 and 12).

At its 37th meeting, on 19 April 2002, the Chairperson of the subcommittee recommended that in order to expedite the arrangements for the advance team, it would be advisable to request the Secretary-General of the United Nations to provide assistance for the necessary preparatory work on a fully reimbursable basis. At the same meeting, the Preparatory Commission agreed with that recommendation (ibid., para. 13).

At its 38th and 42nd meetings, on 1 and 12 July 2002, respectively, the Preparatory Commission took note of the oral report of the Chairperson of the Bureau's subcommittee acting as an interlocutory with the host country, on the progress made by the advance team of experts working to ensure the early and effective establishment of the Court and on review meetings involving the subcommittee, the representatives of the host country and the coordinator of the advance team (PCNICC/2002/2, para. 12).

50. The question concerning the recommendation on the creation of a position of Director of Common Services to be appointed by the Assembly of States Parties is covered in document PCNICC/2002/2, para. 13. At the 41st plenary meeting, on 8 July 2002, the Chairperson of the Commission appointed a focal point on the matter. At the 42nd plenary meeting, on 12 July 2002, the Commission took note of the oral report of the focal point that a job description of the post had been prepared for advertisement.

(f) Establishment of an international criminal bar (PCNICC/2002/2, para. 14)

51. The recommendation concerning the establishment of an international criminal bar is contained in document PCNICC/2002/2, para. 14. At the 41st plenary meeting, on 8 July 2002, the Chairperson of the Commission appointed a focal point on the matter. At the 42nd meeting, on 12 July 2002, the Commission:

took note of the holding in Montreal, from 13 to 15 June 2002, of a conference on an international criminal bar for the International Criminal Court, and of its conclusions. The Commission welcomed this development and encouraged the process of creating an independent representative body of counsel and legal associations. The Commission recommended that the Assembly of States Parties await any further developments on the issue, including the finalization of the constitution of this body, before taking further steps in accordance with rule 20(3) of the Rules of Procedure and Evidence, and to that end to include the item on its agenda at the appropriate time (PCNICC/2002/2, para. 14).

Notes

[1] See summaries of proceedings of the Preparatory Commission at its first session (16-26 February 1999) (PCNICC/1999/L.3/Rev.1); at its second session (26 July-13 August 1999) (PCNICC/1999/L.4/Rev.1 and Corr.1); at its first, second and third (29 November-17 December 1999) sessions (PCNICC/1999/L.5/Rev.1); at its fourth session (13-31 March 2000) (PCNICC/2000/L.1/Rev.1); at its fifth session (12-30 June 2000) (PCNICC/2000/L.3/Rev.1); at its sixth session (27 November-8 December 2000) (PCNICC/2000/L.4/Rev.1); at its seventh session (26 February-9 March 2001) (PCNICC/2001/L.1/Rev.1); at its eighth session (24 Septembe-5 October 2001) (PCNICC/2001/L.3/Rev.1); at its ninth session (8-19 April 2002) (PCNICC/2002/L.1/Rev.1); and at its tenth session (1-12 July 2002) (PCNICC/2002/L.4/Rev.1).

Annex

List of documents of the report of the Preparatory Commission

1. **Preparation of draft texts pursuant to resolution F of the Final Act**

(a) Rules of Procedure and Evidence (PCNICC/2000/1/Add.1)

(b) Elements of Crimes (PCNICC/2000/1/Add.2)

(c) A relationship agreement between the Court and the United Nations (PCNICC/2001/1/Add.1)

(d) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country (PCNICC/2002/1/Add.1)

(e) Financial regulations and rules (PCNICC/2001/1/Add.2 and Corr.1 and PCNICC/2002/1/Add. 2)

(f) An agreement on the privileges and immunities of the Court (PCNICC/2001/1/Add.3)

(g) A budget for the first financial year (PCNICC/2002/2/Add.1)

(h) The rules of procedure of the Assembly of States Parties (PCNICC/2001/1/Add.4)

2. Proposals pursuant to resolution F of the Final Act for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime (PCNICC/2002/2/Add.2)

3. **Preparation of other proposals for practical arrangements for the establishment and coming into operation of the Court**

Issues relating to the meeting of the Assembly of States Parties

(a) Draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties (PCNICC/2002/2, annex II)

(b) Provisional agenda for the first meeting of the Assembly of States Parties, to be held at United Nations Headquarters from 3 to 10 September 2002 (PCNICC/2002/2/Add.3)

(c) Composition of the Bureau at the first meeting of the Assembly of States Parties (PCNICC/2002/2, para. 11)

(d) Draft resolution of the Assembly of States Parties concerning the provisional arrangements for the Secretariat of the Assembly of States Parties (PCNICC/2002/1, annex II)

(e) Draft resolution of the Assembly of States Parties relating to the permanent secretariat of the Assembly of States Parties (PCNICC/2002/2, annex X)

Establishment of subsidiary bodies

(a) Draft resolution of the Assembly of States Parties on the establishment of the Committee on Budget and Finance (PCNICC/2001/1, annex I)

(b) Draft resolution of the Assembly of States Parties relating to the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims (PCNICC/2002/2, annex XIII)

Procedures for nomination and for conduct of elections

(a) Draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of members of the Committee on Budget and Finance (PCNICC/2002/2, annex XI)

(b) Draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims (PCNICC/2002/2, annex XIV)

(c) Draft resolution of the Assembly of States Parties relating to the procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court (PCNICC/2002/2, annex XII)

Issues relating to financing for the Court and the budget for the first financial period

(a) Draft resolution of the Assembly of States Parties relating to budget appropriations for the first financial period and financing of appropriations for the first financial period (PCNICC/2002/2, annex III)

(b) Draft resolution of the Assembly of States Parties relating to the Working Capital Fund for the first financial period (PCNICC/2002/2, annex IV)

(c) Draft resolution of the Assembly of States Parties relating to scales of assessments for the apportionment of the expenses of the International Criminal Court (PCNICC/2002/2, annex V)

(d) Draft resolution of the Assembly of States Parties on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court (PCNICC/2002/1, annex II)

(e) Draft decision of the Assembly of States Parties relating to the provision of funds for the Court (PCNICC/2002/2, annex VI)

(f) Draft resolution of the Assembly of States Parties on relevant criteria for voluntary contributions to the International Criminal Court (PCNICC/2001/1, annex II)

(g) Draft decision of the Assembly of States Parties relating to interim arrangements for the exercise of authority pending the assumption of office by the Registrar (PCNICC/2002/2, annex VII)

Issues relating to officials and staff as well as to the establishment of the International Criminal Court

(a) Conditions of service and compensation of judges of the International Criminal Court (PCNICC/2002/2/Add.1, annex VI)

(b) Draft decision of the Assembly of States Parties relating to the participation of the International Criminal Court in the United Nations Joint Staff Pension Fund (PCNICC/2002/2, annex VIII)

(c) Draft resolution of the Assembly of States Parties relating to selection of the staff of the International Criminal Court (PCNICC/2002/2, annex IX)

(d) Report of the intersessional meeting of experts held at The Hague from 11 to 15 March 2002 (PCNICC/2002/INF/2)

(e) Activities of the Bureau subcommittee acting as an interlocutory with the host country (PCNICC/2002/L.1/Rev.1, paras. 11-13; PCNICC/2002/L.4/Rev.1, para. 11; and PCNICC/2002/2, paras. 12 and 13)

(f) Establishment of an international criminal bar (PCNICC/2002/2, para. 14)